IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 8 of 2004

PARAS RAM
V/S
ASHA RAM & ORS

Mr. MC BHOOT, for the appellant / petitioner

Mr. SDN BHATT, for the respondent

Date of Order : 14.9.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties.

Both the learned courts below have dismissed the plaintiff's suit for partition and injunction, by holding, that by virtue of the Will Ex.A-5, the property stands bequeathed to the defendant Asha Ram.

Assailing the impugned judgments and decrees it has been contended by the learned counsel for the appellant that according to provisions of Section 2(h) of the Indian Succession Act, the Will can be made with respect to the property of the testator, which he desires to be carried into effect after his death, and for the purpose of interpretation of the Will, provisions of Chapter VI, starting from Section 74, are required to be considered, and if considered on these parameters, on a proper reading

of the Will it is clear, that the only existing property, as it existed at the time of execution of the Will, only, was bequeathed, and there is no such stipulation therein, that thereby, even the properties that may be acquired subsequently, by the testator, upto his death, were also bequeathed, or contemplated to be bequeathed. Not only this, rather at page-2 of the Will, it was clearly expressed, that in case the testator dies before his wife, the wife would be entitled to live and maintain herself, from his immovable property, being the house described above. Thus, the testator clearly meant, only the house described in the Will, to be his immovable property, and the Will was never contemplated to cover the property that may be acquired by the deceased, after making of the Will, till his death. With this, it was contended, that since the question involve in the present second appeal is of interpretation of the Will, a document, which by itself amounts to substantial question of law, and therefore, the question is required to be framed, and then decided onl;y after admitting the appeal.

As against this learned counsel for the respondent referred to some parts of the statement of P.W.1, and then referring to the two judgments, relied upon by the learned courts below, contended that from the reading of the Will, it is clear that the Will was with respect to his entire property, as may have existed at the time of his death, and

the defendant was made exclusive and absolute owner of his entire property. Thus, the impugned judgments do not require any interference, and there is no question of interpretation of Will, at all involved. It was also contended that in the probate proceedings, the appellant contested those proceedings, alive of the fact, that the probate proceedings did comprehend the adjudication of the rights of the legatee with respect to the plot in question also, and therein it was contended, that the plot belongs to the present appellant to the extent of half, and since in those probate proceedings decision has been arrived at against the appellant, now it is not open to the appellant to raise all these issues. Learned counsel also referred to the receipt Ex.A-3, executed by the appellant, at the time, when he was separated from the father.

In rejoinder it was contended, that even a total reading of the receipt does not show, that any partition had taken place at that time, nor that, thereby the appellant had relinquished all his rights of inheritance in the property of the deceased father, rather it was only a document, evidencing the articles and goods taken by the appellant, so as to avoid any future dispute. It is also contended, that since the probate proceedings did not comprehend, within their scope the power to adjudicate right, title or interest of the parties, and are confined only to the question of proof of Will, its genuineness, and

it being the last Will of the testator, the mere fact that some averment or finding had been arrived at in those proceedings, somewhere, that are of no consequence, and the learned courts below have rightly found it to be so in that regard.

I have considered the submissions. True it is that the question of interpretation of a document is a question of law. However, the mere fact that interpretation of document is a question of law, it cannot be said that, of necessity, wherever any argument is raised about interpretation of document, the second appeal should always be admitted, irrespective of the sustainability of the argument raised. Therefore, I have considered the arguments made on merits, and have gone through the Will, so also the legal position as emerging from various provisions of Indian Succession Act, and the judgments relied upon by the learned courts below.

A look at the Will does show, that of course, it was recited in the opening, that testator is going to participate in the agitation against Gold Control Order, and made recital as to how did he acquire the property situated in Shaipura, and also made recital about his son having been separated, and with this it has also been recited "अब उसका व उसकी आल औलाद का कोई हक मेरी जायदाद मनकुला वगैरमनकुला में नहीं हैं।". This does show, that testator was of the

view, that by separating the son, the appellant, he no more retains any right of inheritance in any of the testator's movable or immovable property. Then, stipulations have been made as to how property would be dealt with for maintenance of his wife, in the event of death of either of the spouse, and in that context the immovable property has been referred to, to be the one as described as above, being the house of Shaipura. But then, at page-3 it has clearly been provided, by portion "A to B" being **"मेरी धर्म पत्नि के स्वर्गवास होने के बाद मेरी जायदाद मनकुला व गैरमनकुला का कामिल मालिक मेरा छोटा लड़का आसाराम होगा।"**. This does clearly show, that after death of the testator, and his wife, the younger son Asha Ram was made to be exclusive and absolute owner **"कामिल मालिक"** of the testator's movable and immovable property.

Of course, there is no recital in the Will, that this would include the property that may be acquired by the testator after making the Will, till his death, but then, there is no recital either, that the Will is confined to the property described in the opening para of the Will, being the house situated at Shaipura; rather the younger son Asha Ram has been made exclusive owner of the movable and immovable property of the testator, after his death, which obviously means, the property as may be existing at the time of his death. This has been legal interpretation made by this Court, in Smt. Ladhi Bai Vs. Thakur Shriji, reported in AIR 1968 Raj.-41, relying upon the established

consistent legal position. Thus, in my view, there is no error in the interpretation of the Will, as made by the learned courts below.

Therefore, the learned courts below have rightly dismissed the suit. Thus, I do not find the appeal to be having any force. The same is, therefore, dismissed summarily.

(N P GUPTA),J.

/Sushil/